

RESOLUTION No. 2008-138-825

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN JOINT USE AGREEMENT WITH THE MIAMI-DADE COUNTY SCHOOL BOARD, ALONG WITH ANY AND ALL ATTENDANT DOCUMENTS, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City staff has been negotiating with the Miami-Dade County School Board for some time regarding the joint utilization of City parks sites and School Board school sites for various recreational activities to serve the residents of the City of Miami Gardens, and

WHEREAS, City staff has finalized an Agreement with the Miami-Dade County School Board for this purpose,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:


Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Joint Use Agreement with the Miami-Dade County School Board, along with any and all attendant documents, a copy of which is attached hereto as **Exhibit A**.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Miami-Dade County School Board, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JULY 9, 2008.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, CMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert  
SECOND BY: Councilman Bratton

VOTE: 6-0

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	___ (Yes)	___ (No) (not present)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	___ (No)
Councilman André Williams	<u>X</u> (Yes)	___ (No)

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# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Barbara Watson  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilman Oliver G. Gilbert, III  
Councilwoman Sharon Pritchett  
Councilman André Williams

## Agenda Cover Page

Date: **July 9, 2008**

Fiscal Impact: No **X** Yes ☐

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes **X** No ☐

Sponsor Name/Department:

**Antranette Pierre, Capital Projects**

Public hearing ☐

Ordinance ☐

1st Reading ☐

Advertising requirement: Yes No **X**

RFP/RFQ/Bid #

Quasi-Judicial ☐

Resolution **X**

2nd Reading ☐

## Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN JOINT USE AGREEMENT WITH THE MIAMI-DADE COUNTY SCHOOL BOARD, ALONG WITH ANY AND ALL ATTENDANT DOCUMENTS, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

## Staff Summary

Due to the continuous population growth and resulting impact on the City's open space, park staff has been forced to find alternative means of recreation space. Additionally and for various reasons, the School Board of Miami Dade County, Florida has become limited in its open space availability.

In the past few years, the City and School Board have worked together to offer use of each parties' space for recreational activities under the auspices of a verbal cooperative agreement. However, in order to avoid scheduling conflicts and to clarify certain level of service requirements, Dade County Public Schools and the City have been working on a joint use agreement that would allow the District use of specific park sites and the City

use of recreational facilities at specific school sites located within the City, as mutually agreed to by both parties.

The agreement includes, but is not limited to, language that addresses hours of use, utilization of respective sites by third parties, future possible construction, and indemnification.

The attached agreement has been negotiated by City staff with Dade County Public Schools. The agreement in its substantial form was approved the School Board at its January 17, 2007 meeting.

**RECOMMENDATION:**

It is recommended that City Council approve the attached resolution authorizing the City Manager to execute a joint use agreement between the School Board of Miami-Dade County, Florida and the City of Miami Gardens for the use of park sites and school sites, respectively within the City of Miami Gardens.



# City of Miami Gardens, Florida



## OFFICE OF CAPITAL IMPROVEMENT PROJECTS

1515-200 NW 167<sup>th</sup> Street, Building 5, Miami Gardens, Florida 33169

Telephone: (305) 622-8000 Fax: (305) 474-9871

Website: [www.miamigardens-fl.gov](http://www.miamigardens-fl.gov)

*Shirley Gibson*  
Mayor

July 21, 2008

*Barbara Watson*  
Vice Mayor

*Melvin L. Bratton*  
Council Member

*Aaron Campbell, Jr.*  
Council Member

*Oliver G. Gilbert, III*  
Council Member

*Sharon Pritchett*  
Council Member

*Andre Williams*  
Council Member

*Dr. Danny O. Crew*  
City Manager

*Ronetta Taylor, CMC*  
City Clerk

Patricia Good, Supervisor II  
Site Acquisition/Leasing and Intergovernmental Coordination  
1450 NE 2 Avenue  
Miami FL 33132

*Re: Transmittal of Joint Use Agreement*

Dear Ms. Good:

Enclosed please find three interlocal agreements between the City of Miami Gardens and the School Board of Miami-Dade County with the attached exhibits. They have been executed by the City, pursuant to Resolution No. 2008-138-825 approved at the July 9, 2008 City Council meeting. As there are three (3) sets of the respective agreements, please execute all three and return one fully executed set to my attention.

Should you have any questions or need for further clarity, please do not hesitate to me at (305) 622-8033.

Sincerely,

Antranette Pierre  
Special Projects Director

Enc.

- c. Ronetta Taylor, City Clerk ✓  
Michael Levine, MDPS Facilities Planning

## **JOINT USE AGREEMENT**

THIS JOINT USE AGREEMENT is made and entered into as of this 9th day of July, 2008, by and between the CITY OF MIAMI GARDENS, a political subdivision of the State of Florida (hereinafter referred to as the "CITY"), and THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic, existing under the laws of the State of Florida (hereinafter referred to as the "BOARD").

### **WITNESSETH**

WHEREAS, the BOARD and CITY are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of the students of Miami-Dade County Public Schools and the people of the City of Miami Gardens; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property which is used by the BOARD for recreational and educational purposes ("school sites"), and the CITY owns and has under its jurisdiction certain real property which is used by the CITY for public park purposes ("park sites"); and

WHEREAS, the BOARD and CITY are desirous of entering into a Joint Use Agreement ("Agreement") to allow park sites and school sites located within the City of Miami Gardens, to be made available to both parties for recreational and educational services, under terms and conditions outlined within the Agreement; and

WHEREAS, the City of Miami Gardens by the adoption of Resolution No. 2008-138-825, at its meeting of July 9, 2008, approved this Joint Use Agreement; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized the Joint Use Agreement in accordance with Board Item No. F-6, at its meeting of January 17, 2007.

NOW, THEREFORE, for and in consideration of the sum of \$1.00, payable by each

party to the other, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I.

**TERM**

The term of this Agreement shall be forty (40) years, effective with the execution of the Agreement by both parties ("Commencement Date"). The CITY and BOARD shall confirm the Commencement Date in a separate written instrument, which shall become a part of this Agreement by reference.

II.

**PREMISES TO BE JOINTLY USED**

The BOARD and CITY agree, as a condition of entering into this Agreement, that certain school sites and park sites, as described in Exhibit "A", shall be included as part of this Agreement, effective with the Commencement Date.

Subsequent to the Commencement Date, park sites or school sites may be added to this Agreement, in whole or in part, upon execution of an amendment to Exhibit "A" by the City Manager of the City of Miami Gardens ("City Manager") or his or her designee and the Superintendent of Schools, or his or her designee. The amendment to Exhibit "A" shall fully indicate the portion of the school site or park site to be used, the proposed hours of use, the maintenance responsibilities, and any other relevant information impacting the operation of the particular site. In conformance with the provisions of Article XIII, the party receiving the request shall review same and shall have the sole authority to grant or deny the request, said approval not to be unreasonably withheld.

Other than as provided for in Article XIV, subsequent to the Commencement Date, individual park sites or school sites may be deleted from this Agreement, in whole or in part, at the behest of the City Manager or the Superintendent of Schools, or his or her designee, upon execution of an amendment to Exhibit "A". The parties agree that, due to the ongoing operation of school and park recreational programs, a party desiring to remove

a site shall notify the other no less than ninety (90) days prior to the date on which it desires the removal to be effective, and that every effort will be made to accommodate the completion of a school year or recreational season prior to the effective date of the amendment to Exhibit "A".

In the event park sites or school sites are added to or deleted from this Agreement, as described above, the amended Exhibit "A" shall become a part of this Agreement, and shall thenceforth remain in effect until such time as it may be further amended.

### **III.**

#### **USE OF PREMISES**

The individual school sites and park sites identified in Exhibit "A", shall only be used by the parties for the purpose of constructing educational and/or recreational improvements, as further defined in Article IV of this Agreement, and for the operation of recreational and/or educational programs by the parties hereto.

#### **A. SCHOOL SITES**

Other than as specified below, or as specifically provided in Exhibit "A", the BOARD shall have full control, custody, right and use of the individual school sites and all parking and recreational facilities located thereon, during regular school hours on regular school days during the Academic School Year as established through the BOARD's approved school calendar. The CITY shall have full control, custody, right and use of the portions of the school sites included in this Agreement on weekdays after school until 11:00 p.m. and on weekends and Holidays from 8:00 a.m. until 11:00 p.m., unless otherwise agreed to in writing by the parties. In addition, the BOARD, at its sole option, may use the school sites, or portions thereof, as may be required for special school events and functions, intramural sports, extra curricular athletics/activities and summer school, during which time it shall have full control, custody, right and use of same. In such event, the Superintendent of Schools or his or her designee shall notify CITY'S Park and Recreation Director ("Park Director") or his or her designee, with as much advance notice as possible.

The CITY shall maintain and provide evidence of Public Liability Insurance or an



ongoing Self-Insurance program covering the CITY, its officers and employees for any activities related to this Agreement during which time the CITY has full control, custody and right and use of the portions of the school sites included in this Agreement.

In the event the BOARD requires use of a school site for special events and functions, on an infrequent basis, at times and days that would otherwise be within the CITY's period of use, the school administrator shall so notify the Park Director, with a minimum of seventy-two (72) hours advance notice.

Notwithstanding the above, the CITY acknowledges that because of the need to assure the safety of school district staff, students and faculty, maintain the security and integrity of school building and grounds, and preclude vandalism of same, the school administrator reserves the unilateral right to limit or alter the means by which the CITY may use a school building, or may eliminate access to the school building altogether.

Additionally, in the event Park patrons create an unsanitary or unsafe condition within a school site (e.g. as a result of Park patrons seeking access to bathroom facilities or drinking water), the CITY agrees to take all steps necessary to immediately correct this situation.

The CITY may, in addition to its own utilization of a school site, designate other not-for-profit parties to provide recreational services and programs on the site, after first receiving written authorization from the BOARD, or its designee, at least thirty (30) days prior to allowing the other entity to operate in this capacity. In this eventuality, the CITY shall be responsible for all use, maintenance, risk management, supervision and other terms and conditions as outlined in this Agreement, as if the CITY were utilizing the school site. The CITY shall require the not-for-profit party to provide it with liability insurance, naming THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, as an additional insured, and that a Certificate of Insurance be provided to the BOARD.

## **B. PARK SITES**

Other than as specified below or as specifically agreed to in Exhibit "A", the BOARD shall have full control, custody, right and use of the portions of the park sites included in this Agreement during regular school hours on regular school days during the Academic School Year as established through the BOARD's approved school calendar. The BOARD acknowledges that because of the nature of parks, areas of the park sites not reserved or used by the BOARD will be open and available for use and enjoyment by the general public. The CITY shall have full control, custody, right and use of the individual park sites and all parking and recreational facilities located thereon, at all other times, unless otherwise agreed to in writing by the parties.

The BOARD shall maintain and provide evidence of Public Liability Insurance or an ongoing Self-Insurance program covering the BOARD, its officers and employees for any activities related to this Agreement during which time the BOARD has full control, custody and right and use of the portions of the park sites included in this Agreement.

In the event the CITY requires use of a park site for special events and functions, on an infrequent basis, at times and days that would otherwise be within the BOARD'S period of use, the Park Director or his or her designee, shall so notify the school administrator, with a minimum of seventy-two (72) hours advance notice.

Notwithstanding the above, the BOARD acknowledges that because of the need to assure the safety of Park patrons and staff, maintain the security and integrity of park building and grounds, and preclude vandalism of same, the park administrator reserves the unilateral right to limit or alter the means by which the BOARD may use a park building, or may eliminate access to the park building altogether.

Additionally, in the event school district staff, students and faculty create an unsanitary or unsafe condition within a park site (e.g. as a result of school district staff, students and faculty seeking access to bathroom facilities or drinking water), the BOARD agrees to take all steps necessary to immediately correct this situation.

**C. USE OF ADDITIONAL FACILITIES AT SITE**

In the event facilities not covered by this Agreement are used, the requesting party agrees to be bound by all terms and conditions of this Agreement, including supervision and liability.

**D. CITY USE OF SCHOOL SITES FOR SPECIAL EVENTS**

Notwithstanding the foregoing or anything contained herein to the contrary, the BOARD acknowledges that the CITY may seek use of a school site, from time to time, for special CITY sponsored events and functions ("City Events"). In that event, the CITY is to make written application to the BOARD at least thirty (30) days in advance of the proposed City Event, indicating the nature of the event, event duration, impact on the school's use of the school site and any other relevant information. The BOARD, acting through its designee, shall respond with all due haste, and approval of such City Event shall not be unreasonably withheld.

The CITY shall remove all refuse or debris generated by any City Event and shall repair all damage to the school site occurring during such event, and the school site shall be made safe and usable for the school prior to the BOARD'S next period of use. In connection with City Events, the CITY may charge and collect admission and concession fees, provided the fees are utilized, in whole or in part, to offset costs associated with the City Event. The CITY will make every reasonable effort to confine the use of portable band shells or the installation of tents, equipment or other such facilities to adjacent or nearby park sites.

When using the school site for a City Event, the CITY shall ensure that any and all vendors, operators or providers of services occupying the school site, shall do so only with CITY's approval. All such vendors, operators and service providers shall be required to maintain a policy of General Liability Insurance from an insurance company licensed to do business in Florida and with an A.M. Best's rating of "B+" or better, with a single limit of no less than one million dollars (\$1,000,000), without interruption during the event. A Certificate of Insurance shall be provided to the BOARD a minimum of ten (10) days prior

to the event, and the Certificate shall name THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA as an additional insured. The CITY shall further assure that adequate security is provided during the event to address parking and crowd control issues.

**E. ADDITIONAL RULES AND REGULATIONS FOR USE OF SITES**

The BOARD and CITY may promulgate and enforce reasonable rules and regulations governing their use of the park sites and school sites respectively, and shall provide adequate supervision of the school and park sites at all times that they conduct or sanction activities thereon. Any such additional rules and regulations will be agreed upon by the Superintendent of Schools or his or her designee, and the City Manager or his or her designee, and shall be memorialized in writing.

In the event use of school or park facilities by the other party creates a cost to the property owner, beyond that which would normally be borne by that entity (e.g. paper goods, janitorial services, staff time, etc.), the user agrees to reimburse the other party for same.

The parties agree that they shall secure and lock all perimeter and parking lot gates, as required by the property owner, at the completion of their period of use, and shall remove all vehicles stationed in the parking lots by them prior to the other parties period of use. The parties shall remove said vehicles using all lawful means, and may post signs to facilitate same, after securing approval from the Park Director or his or her designee, or school administrator, as applicable.

The sale or consumption of alcoholic beverages at any time, including City Events, is expressly prohibited on any school site.

Neither party shall commit nor permit any violations of applicable laws, rules and regulations of the SCHOOL BOARD, CITY, COUNTY, STATE, or FEDERAL GOVERNMENT, as they may be amended from time to time, upon the other party's property.

## **F. ACCESS TO SCHOOL SITES AND PARK SITES BY CITY EMPLOYEES**

Notwithstanding any other term or condition of this Agreement, the CITY stipulates that CITY employees identified as having been convicted of a crime involving moral turpitude, including, but not limited to those offenses described on Exhibit "B", attached hereto and incorporated herein by reference, will not be permitted to access school sites or park sites while public school students are present during the BOARD'S period of use, as specified in Article III.

## **IV.**

### **IMPROVEMENTS BY CITY AND BOARD**

The BOARD and CITY agree to accept the school sites and park sites described in Exhibit "A", in the condition they are in as of the Commencement Date of this Agreement.

#### **A. IMPROVEMENTS TO OWN SITES**

The BOARD and CITY, at their sole option, may construct additional recreational or educational facilities on their respective sites, and maintain equipment related to the construction of any such facilities on their respective sites, at such time as that party determines such a need. The BOARD and CITY agree to notify the other in writing, with as much advance notice as possible, of their intent to construct such facilities. The parties agree to cooperate in every reasonable way to minimize the disturbance to the peaceful possession and use of the school sites and park sites by the other during any such construction activities.

#### **B. IMPROVEMENTS TO THE OTHER PARTY'S SITES**

Subject to the provisions of Article XIX, the BOARD and CITY may construct additional recreational improvements on the other party's sites, at its sole cost and expense, subject to prior written approval of the other party. Prior to initiating any such project on the other parties' site, the parties shall first assign responsibility for Maintenance, Utilities and for Damage or Destruction, under Articles V, VI and XIV of this Agreement. Exhibit "A" shall be modified, as necessary, to reflect these responsibilities as well as the

newly constructed improvements.

Each party shall be responsible for securing any permits, zoning variances, regulatory or governmental approvals, license and/or use approvals which may be required for the construction of any improvement of any nature installed on the others property.

## **V.**

### **MAINTENANCE**

Subject to the provisions of Article XIX, unless specified to the contrary in this Agreement or any Amendment hereto, the CITY shall keep all recreational facilities and equipment located on the park sites, and the BOARD shall keep all recreational facilities and equipment located on the school sites, in a safe, clean and working condition at all times. Each party shall maintain or repair the turf, trees and other landscaping, irrigation system, field and security lighting, fencing and other access controls, parking lots, play apparatus, P.E. shelters, baseball/softball/soccer fields and other like improvements located on their respective property. However, each party shall remove litter and trash generated during their period of use on both the school and park sites, prior to the other parties next period of use, and shall repair those improvements to grounds, buildings, recreational improvements or any other improvements to the others property, where the property owner can clearly substantiate that the improvements were damaged as a result of the actions of the other.

The parties acknowledge that the BOARD shall provide routine maintenance to the school sites and grounds in conformance with the school district's routine maintenance schedule. In the event the CITY requires maintenance to recreational facilities and grounds at a school site beyond what is routinely provided by the BOARD, the CITY may provide same at its sole cost and expense, after first securing the approval of the school administrator in writing. Any such maintenance activities on school sites shall be provided by the CITY during its period of use.

The CITY may apply certain herbicides and pesticides to the school sites during the CITY'S period of use, using a certified technician, after submitting specifications and

environmental information to the BOARD or its designee, and securing written approval from same to utilize the product. The CITY must coordinate and schedule use of the herbicide or pesticide with the school administrator prior to its application. The CITY agrees to use its best efforts to schedule all maintenance functions on school sites or park sites so as to limit any impact on school operations.

In compliance with the December 1999 version of the State Requirements for Educational Facilities, or its successor document, the CITY shall conduct annual inspections of any bleachers it has placed on the school sites, to assure they are in a safe condition and free from hazard, and shall secure a certificate from a structural engineer on a biennial basis attesting to same. A copy of the biennial certificate shall be provided to the BOARD without demand.

Notwithstanding the above, both parties reserve the right to promulgate and enforce reasonable rules and regulations regarding responsibility for maintenance of their own property.

## **VI.**

### **UTILITIES**

Unless otherwise agreed to in writing by the parties, the CITY and the BOARD shall each pay for the electricity, water and sewer and other utilities consumed on their respective properties.

## **VII.**

### **LIABILITY FOR DAMAGE OR INJURY**

Subject to the limitations included within Section 768.28, Florida Statutes, the CITY shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on the park sites during the BOARD'S period of use, other than damage or injury resulting from the negligence or improper conduct on the part of the CITY, its agents,

representatives or employees, or failure of the CITY to perform its covenants under this Agreement.

Subject to the limitations included within Section 768.28, Florida Statutes, the BOARD shall not be liable for any damage or injury which may be sustained by the CITY or any persons on the school sites during the CITY'S period of use other than damage or injury resulting from the negligence or improper conduct on the part of the BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Agreement.

#### **VIII.**

#### **INDEMNIFICATION**

The BOARD covenants and agrees that it shall indemnify, hold harmless and defend the CITY, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with the BOARD'S use and occupancy of the park sites during the term of this Agreement, for any personal injury, loss of life or damage to property sustained in or about the park sites, to the extent of the limitations included within Section 768.28, Florida Statutes.

The CITY covenants and agrees that it shall indemnify, hold harmless and defend the BOARD, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with the CITY'S use and occupancy of the school sites during the term of this Agreement, for any personal injury, loss of life or damage to property sustained in or about the school sites, to the extent of the limitations included within the Section 768.28, Florida Statutes.

Nothing in this Agreement is intended to operate as a waiver of the sovereign immunity of either party.

#### **IX.**

#### **ASSIGNMENT**

Except as otherwise provided, neither party shall assign, transfer, or otherwise



dispose of this Agreement for the term hereof, or sublease the park sites or school sites or any part thereof or permit the said park sites or school sites to be occupied by other persons, firms, corporations, or governmental units during the other party's period of use, except with the prior written consent of the other party.

## **X.**

### **CANCELLATION AND DEFAULT**

Other than as provided below, this Agreement may be cancelled by either party, with one (1) year advance written notice to the other party.

#### **A. NOTICE OF DEFAULT AND OPPORTUNITY TO CURE**

The CITY shall provide the BOARD with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the BOARD. If the BOARD fails to cure said default within thirty (30) days of receipt of written notice, or does not provide the CITY with a written response within thirty (30) days after receiving notification, indicating the status of the BOARD'S resolution of the violations and providing for a schedule to correct all deficiencies, the CITY shall have the right to terminate this Agreement, without penalty, upon ten (10) days additional written notice to the BOARD.

The BOARD shall provide the CITY with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the CITY. If the CITY fails to cure said default within thirty (30) days of receipt of written notice, or does not provide the BOARD with a written response within thirty (30) days after receiving notification, indicating the status of the CITY'S resolution of the violations and providing for a schedule to correct all deficiencies, the BOARD shall have the right to terminate this Agreement, without penalty, upon ten (10) days additional written notice to the CITY.

#### **B. COMPENSATION FOR IMPROVEMENTS**

Other than for cause, should the Agreement be cancelled or a school site or park site be deleted from this Agreement, the deleting or canceling entity shall reimburse the other party for any capital costs expended on the deleting/canceling party's lands, as

amortized equally over a one-hundred twenty (120) month period; such amortization period to commence upon the date of final completion of the improvement. In the event of cancellation or termination, the school sites and park sites shall be surrendered in accordance with the provisions of Article XXIII.

## **XI.**

### **NO LIABILITY FOR PROPERTY**

The CITY and BOARD agree to insure or self insure their respective interests in personal property to the extent each deems necessary or appropriate and hereby mutually waive all rights to recovery for loss or damage by any means and waive all rights to recovery for loss or damage to such property by any cause whatsoever. The BOARD and CITY hereby waive all rights of subrogation against each other under any policy or policies they may carry, or on property placed or moved on the park sites or school sites.

## **XII.**

### **RIGHT OF ENTRY**

Subject to the provisions of Article XIX, after first providing reasonable notice to the school administrator or Park Director or their respective designees, either party, or any of its agents, shall have the right to enter said park sites or school sites during all reasonable working hours to examine the same, provided their actions do not in any way interfere with the other party's use of the park sites or school sites.

This right of entry includes, but is not limited to, the right of the party, or any of its agents, representatives or employees, to enter its school site or park site for the purpose of examination related to the design and/or construction of recreational, educational or parking facilities. It is agreed and understood by the parties that such examinations may include, but are not limited to, test borings and surveys which require entry by personnel on to, or leaving materials and equipment on, a site for an extended period of time. The parties agree to work together to minimize the affect of these examinations on the use of the site by the other party.

### **XIII.**

#### **NOTICE AND GENERAL CONDITIONS**

**A.** All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service or certified mail addressed to the parties at their respective addresses indicated below, or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

To the BOARD: The School Board of Miami-Dade County, Florida  
c/o Superintendent of Schools  
1450 N.E. Second Avenue, Room 912  
Miami, Florida 33132

With copies to: Miami-Dade County Public Schools  
Facilities Planning  
Attn: Administrative Director  
1450 N.E. Second Avenue, Room 525  
Miami, Florida 33132

The School Board of Miami-Dade County, Florida  
c/o School Board Attorney  
1450 N.E. Second Avenue, Room 400  
Miami, Florida 33132

To the CITY: City Manager  
City of Miami Gardens  
1515 Northwest 167 Street, Building 5, Suite 200  
Miami Gardens, Florida 33169

**B.** Title and Paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

**C.** For purposes of this Agreement, the Superintendent of Schools shall be the party designated by the BOARD to grant or deny all approvals required by this Agreement, including without limitation, adding or deleting individual school sites from this Agreement,

changing dates and hours of use, authorizing use of a school site by a not-for-profit party, allowing the CITY to hold City Events on a school site, allowing the CITY to construct recreational improvements on a school site or to cancel this Agreement. The City Manager is the party designated by the City Council to grant or deny all approvals required by this Agreement, including without limitation, adding or deleting individual park sites from this Agreement, changing dates and hours of use, authorizing use of a park site by a not-for-profit party, allowing the BOARD to hold School Events on a park site, allowing the BOARD to construct recreational improvements on a park site or to cancel this Agreement.

#### **XIV.**

##### **DAMAGE OR DESTRUCTION**

In the event one or more park sites or school sites should be destroyed or so damaged by fire, windstorm or other casualty to the extent the facilities are rendered untenable or unfit for the purposes of the other party, either party may immediately discontinue such use of the impacted site on a temporary basis, by so notifying the other in writing. However, if neither party shall exercise the foregoing right to discontinue use within forty-five (45) days after the date of such damage or destruction, the property owner shall cause all recreational improvements to be repaired and placed in a safe, secure and useable condition and compatible for school and community recreational use, within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the parties, which shall be determined based upon the scope and nature of the damages, costs of the necessary repairs and available funding for such repairs by the party responsible. Should the facilities not be repaired and rendered tenantable within the aforementioned time period, then one party may, at its sole option, place the other party in default, or the parties may enter into an Amendment to this Agreement to permit the other party to make the necessary repairs, or the parties may remove the site from Exhibit "A," as provided in Article II.

#### **XV.**

##### **NONDISCRIMINATION**

Both parties agree that there will be no discrimination against any person based

upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, in the use of the park sites and school sites and improvements thereon. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of the other party, effective the date of the Court Order”.

**XVI.**

**PEACEFUL POSSESSION**

Subject to the terms, conditions, and covenants of this Agreement, both parties agree that the other party shall and may peaceably have, hold and enjoy the above described park sites and school sites, without hindrance or molestation by the other party. Subject to the provisions of Article XXIII, at the expiration of this Agreement, both parties shall, without demand, quietly and peaceably deliver up possession of the park sites and school sites and all improvements thereon in good order and repair, except for normal wear and tear, or decay and damage by the elements, or other Acts of God.

**XVII.**

**SUCCESSORS AND ASSIGNS**

This Agreement shall extend to and be binding upon the parties herein, their legal representatives, successors and assigns.

**XVIII.**

**OPTION TO RENEW**

If not in default in performance of the obligations set forth in this Agreement, either party shall have the right and option to renew this Agreement under the same terms and conditions set forth herein for two (2) additional terms of five (5) years each from the expiration of the original term or any renewal hereof, with the mutual agreement of the other party.

**XIX.**

## **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

The Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of Federal, State and Local Governments, including, but not limited to, the Americans with Disabilities Act, as they apply to this Agreement.

### **XX.**

#### **CONSTRUCTION OF AGREEMENT**

This Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be in Miami-Dade County, Florida. In the event of litigation between the parties, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. This provision shall survive the termination of this Agreement.

### **XXI.**

#### **SEVERABILITY**

In the event any paragraph, clause or sentence of this Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by the deletion thereof, provided to do so would not render interpretation of the Agreement provisions ambiguous or a nullity.

### **XXII.**

#### **WAIVER**

No waiver of any provision hereof shall be deemed to have been made unless such waiver be in writing and signed by the CITY or BOARD. The failure of either party to insist upon strict performance of any of the provisions or conditions of this Agreement shall not be construed as waiving or relinquishing in the future any such covenants or conditions, but the same shall continue and remain in full force and effect.

### **XXIII**

### **SURRENDER OF PREMISES**

Notwithstanding any other provision of this Agreement, upon the cancellation of this Agreement for cause, or upon the expiration of this Agreement or any extension thereof, the CITY and BOARD agree, at the other parties sole option, to remove any improvements or facilities constructed by the CITY on the school site or by the BOARD on the park site, and to restore the area to the same or better condition as existed before the Commencement Date of this Agreement, within ninety (90) days of said termination, cancellation or expiration, or other reasonable period of time agreed to by the parties. In the event the BOARD or CITY elect to retain the improvements constructed on their property, the other party agrees to convey title to said improvements, without compensation due the other.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**XXV**


### **WRITTEN AGREEMENT**

This Agreement represents the entire agreement between the parties. All Amendments shall be in writing and approved as required by this Agreement.

IN WITNESS WHEREOF, the BOARD and CITY have caused this Joint Use Agreement to be executed by their respective and duly authorized officers the day and year first hereinabove written.

**CITY:**

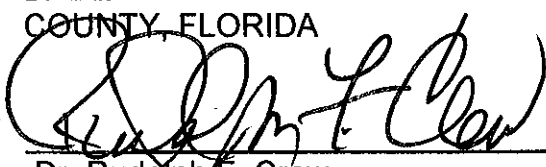
CITY OF MIAMI GARDENS

  
\_\_\_\_\_  
City Manager

**BOARD:**

THE SCHOOL BOARD OF MIAMI-


DADE  
COUNTY, FLORIDA

  
\_\_\_\_\_  
Dr. Rudolph F. Crew  
Superintendent of Schools


ATTEST:

  
\_\_\_\_\_  
Deputy Clerk  
City

Approved as to form:

  
\_\_\_\_\_  
City Attorney

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
School Board Attorney



## EXHIBIT "A"

### Barbara Hawkins Elementary School (19010 N.W. 37 Avenue) and Carol City Middle School (3737 N.W. 188 Street):

- The City will continue to use the recreational facilities on the combined school campus as Risco Park, consisting of the school's three baseball fields (two of which are lighted), eight basketball courts, two lighted tennis courts, one small storage building, the concession/restroom building and 100 parking spaces. The City will pay its proportionate share of maintenance and utility costs.

### Vista Verde Vacant School Site (21001 N.W. 39 Avenue):

- The City will continue to use this future school site in conjunction with its adjacent City-owned Vista Verde Park, consisting of the lighted basketball court, lighted path, restroom/shelter, and all other existing recreational amenities located on the future school site. The City will be responsible for all maintenance and utility costs. In addition, the City, at its sole expense, will make improvements to the existing restroom/shelter, lighted basketball court, and lighted path to conform with planned improvements on the adjacent City-owned land. As a condition for making these improvements, the City will waive the "compensation for improvements" provisions of the Agreement, as it relates to the Vista Verde vacant school site.

### Norland Middle School (1235 N.W. 192 Terrace):

- The City will continue to use and maintain the school's baseball field as an extension of the adjacent City-owned Norwood Park.

### Robert Renick Education Center (2201 N.W. 207 Street):

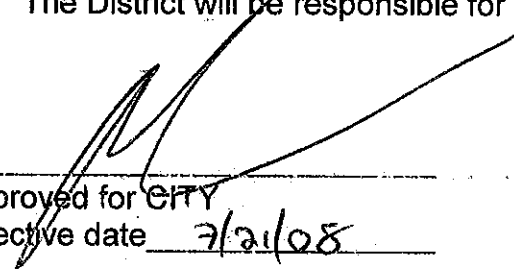
- The City will use the school's playfield to supplement Park recreational needs, and will be responsible for all maintenance and utility costs during its period of use...

### Miami Carol City Senior High School (3422 N.W. 187 Street) Miami Carol City Park (3201 NW 184 Street):

- The Board will continue to use the adjacent Miami Carol City Park site to supplement the recreational needs of Miami Carol City Senior High School.

Miami Norland Senior High School (1050 N.W. 195 Street):

- The Board will continue to use portions of the adjacent North Dade Optimist Park site to supplement the recreational needs of Miami Norland Senior High School. The District will be responsible for site maintenance during its period of use.

  
\_\_\_\_\_  
Approved for CITY

Effective date 7/21/08

  
\_\_\_\_\_  
Approved for BOARD

Effective date 7/29/08

Joint Use Agreement – Miami Gardens

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
School Board Attorney

## EXHIBIT "B"

- Child Abuse or Child Neglect (Section 827.03 F.S.)
  - Contributing to the Delinquency or Dependency of a Child (Section 827.04 F.S.)
  - Exhibiting a Firearm or Weapon within 1,000 feet of a school (Section 790.115 F.S.)
  - Incest (Section 826.04 F.S.)
  - Indecent Exposure (Section 800.03 F.S.)
  - Kidnapping/False Imprisonment (Section 787.01, 787.02 F.S.)
  - Lewd and Lascivious Behavior (Section 798.02, 800.04 F.S.)
  - Manslaughter (Section 782.07 F.S.)
  - Murder (Section 782.04 F.S.)
  - Removing Children from the State or Concealing Children contrary to court order (Section 787.04 F.S.)
  - Sexual Performance by a child (Section 827.071 F.S.)
  - Sale of alcohol to a minor (Section 562.11 F.S.)
- 
- Killing of an unborn child by injury to the mother (Section 782.09 F.S.)
  - Felony Battery/Assault (Section 784.041 F.S.)
  - Felony Drug Possession, Sale or Distribution (Section 893.13 F.S.)
  - Pornography (Distribute or possess to sell obscene material) (Section 847.011 F.S.)
  - Prostitution/Solicitation of Prostitution (Section 796.07 F.S.)
  - Sexual Assault/Sexual Battery (Section 794.011 F.S.)